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*Transmitted via electronic mail*

Eric J. Wilson  
Deputy Director for Enforcement and Homeland Security  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region II  
290 Broadway  
New York, NY 10007-1986

Re: Diamond Alkali Site, Lower 8.3 Miles of Lower Passaic River  
Resonse to EPA Letters Regarding Next Steps Including Initial Cash Out Settlement

Dear Mr. Wilson:

I'm writing in response to your letters of March 30, and May 17, 2017, notifying more than one hundred entities, including General Electric Company (GE), that, with respect to the lower 8.3 miles of the Lower Passaic River Operable Unit of the Diamond Alkali Superfund Site (designated as OU2), EPA has identified only twenty Potentially Responsible Parties (PRPs) as current candidates for cash out settlements. GE applauds EPA's willingness to cash out de minimis parties thereby reducing the incurrence of further transaction costs. Respectfully, GE submits that EPA knows enough about both OU2 and GE's alleged responsibility for any releases of hazardous substances to the Passaic River for EPA to extend a similar cash out settlement offer to GE, either now or as part of the process to identify additional parties eligible for cash out settlements as discussed in your May 17 letter.

EPA's ROD for OU2 makes clear that dioxins, furans and PCBs are the "main risk drivers."<sup>1</sup> GE is not alleged to have discharged dioxins, furans or PCBs to the Lower Passaic River Study area. In fact, GE has been told that it is an "indirect discharge PRP" in connection with its former RCA manufacturing operations in Harrison, New Jersey that, according to Waste Effluent Surveys (WES) included with the "Tierra Solutions' Nexus Documents," may have discharged waste water containing metals to the municipal sewer system.<sup>2</sup>

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<sup>1</sup> EPA ROD, Attachment E, updated mechanistic model at 11-23 (2016).

<sup>2</sup> The WES for the Harrison facilities indicate that the plant's discharge was monitored for nickel, copper, arsenic, iron, aluminum and lead (see Indirect Discharge PRP cases for the Lower Passaic River Study Area,

As documented in the ROD and associated administrative documents, EPA's decision-making process for OU2 did not consider any of the metals identified in the WES for those facilities.<sup>3</sup> For those PRPs like GE that are not alleged to have discharged remedy-driving contaminants, the costs associated with being named by EPA as a PRP for this site, where a remedy estimated to cost in excess of \$1.4 billion dollars has been selected for a portion of a single operable unit, far outstrip any potential allocated share of the cleanup costs (if indeed any share is ultimately allocated to such tangentially-connected PRPs).

EPA has broad statutory authority to enter cash out settlements under CERCLA § 122 and application of that authority is particularly appropriate at a site such as OU2 where many PRPs have limited or no connection with the risks that are driving the remedy. EPA's own guidance recognizes that the early elimination of minor potentially responsible parties is "one of the primary goals" of § 122(g).<sup>4</sup> For reasons GE is prepared to discuss with the Agency either now or in the future, EPA's early cash out settlement offer is too narrowly drawn to eliminate minor PRPs from this matter, and offering additional cash out settlements would advance § 122(h)'s goals of "reduc[ing such parties'] transaction costs, provid[ing] them with a high degree of repose, and creat[ing] greater fairness in the Superfund program."<sup>5</sup>

In closing, GE supports EPA's decision to focus on the contaminants driving the risk that led EPA to select the remedy outlined in the March 2016 ROD, and encourages EPA to design an efficient and cost-effective process leading to further cash out settlements for those PRPs that did not discharge remedy-driving contaminants to the Lower Passaic River.

Very Truly Yours,



Roger Florio

cc: Juan Fajardo, ORC  
Bob Gibson, GE

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PRP Extraction Form and Evidence concerning General Electric (RCA Site), July 13, 2006, pages TAF00002-7 and TAF000010-15) as well as cyanide and trichlorethylene. As described in prior correspondence (see, March 10, 2015 letter to Eric Schaaf from ten companies including GE; see also December 15, 2006 letter from David Hayes, Latham & Watkins, to Sarah Flanagan, EPA), with the possible exception of cyanide, the WES do not document the discharge of any of these substances to the municipal sewer system or the Lower Passaic River.

<sup>3</sup> See, e.g., ROD Responsiveness Summary at page 213.

<sup>4</sup> See Interim Guidance on Settlements with *De Minimis* Waste Contributors under Section 122(g) of SARA (June 19, 1987), page 10.

<sup>5</sup> EPA, *Guidance on Administrative Response Cost Settlements under Section 122(h) of CERCLA and Administrative Cashout Settlements with Peripheral Parties under Section 122(h) of CERCLA and Attorney General Authority* at 8 (Dec. 22, 1988).